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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of	)	
	)	
Guidelines for Evaluating	)	ET Docket No. 93-62
the Environmental Effects	)	
of Radiofrequency Radiation	)	

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FEDERAL COMMUNICATIONS COMMISSION
SECRETARY

To: The Commission

REPLY

AirTouch Communications, Inc. ("AirTouch"), by its attorneys and pursuant to Section 1.106(h) of the Commission's rules, hereby replies to the Oppositions to and Comments on the Petitions for Reconsideration of the Commission's Report and Order[1/] in the above-captioned proceeding. The following is respectfully shown:

I. The Categorical Exclusion for CMRS Transmitters Should Be Reinstated

1. In its Petition for Reconsideration of the RF Order, filed September 6, 1996, AirTouch demonstrated that the Commission's elimination of the categorical exclusion for certain CMRS transmitters operating at less than 3500 watts is not supported by the record, and argued that the

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1/ Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, ET Docket No. 93-62, Report and Order, FCC 96-326, released August 1, 1996) (the "RF Order").

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categorical exclusion should be reinstated. Other licensees with substantial experience in installing and monitoring CMRS facilities support AirTouch and substantiate that because such facilities have not been shown, and are unlikely, to cause MPE limits to be exceeded, rooftop CMRS transmitters operating at less than 3500 watts should not be subject to the obligations generally imposed by the new rules adopted in the RF Order.[2/]

2. AirTouch agrees with AT&T[3/] that demands for additional regulatory burdens on CMRS carriers, such as those propounded by the Cellular Phone Taskforce's ("the "Taskforce") Petition for Reconsideration, are unwarranted. The primary concern of the Taskforce is the effect of RF emissions on "electrosensitive" persons. However, there is no evidence that 3500 watt rooftop transmitters contribute significantly to this condition. Consequently, AirTouch believes that the Taskforce's unsupported opposition to reinstatement of the categorical exclusion for rooftop transmitters[4/] is unwarranted.

2/ See Comments of Arch Communications Group, Inc. ("Arch") Supporting Petitions for Reconsideration, at 4-5; Comments on Petitions for Reconsideration of AT&T Wireless Services, Inc. ("AT&T"), at 3.

3/ See Comments of AT&T at 3-4.

4/ See Opposition to Petition for Reconsideration and Clarification of Paging Network, Inc.

II. Like Services Should Be Subject to Comparable Regulation of RF Emissions

3. In its Comments, AT&T requests that to the extent the Commission narrows the definition of "covered SMR" systems facilities for purposes of the categorical exclusion, as requested in the Petitions for Reconsideration of the RF Order filed by the American Mobile Telecommunications Association and the Personal Communications Industry Association, the Commission also should exempt other CMRS facilities providing comparable services.[5/] Similarly, RAM Mobile Data USA L.P. seeks exclusion of data-only services that utilize short duty-cycle transmissions and thus limit exposure to RF radiation.[6/] AirTouch supports each of these requests, which are consistent with the Commission's well-established principle of regulating like services in a like manner.

III. The Role of Site Owners in Achieving Compliance Should Be Clarified

4. Following review of the new obligations imposed on licensees with respect to monitoring and compliance with

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5/ Comments of AT&T at 4.

6/ Indeed, narrowband messaging services, which consist of short bursts of digital data, are no different than data-only services. To the extent the Commission grants additional relief for data-only services, it should do so for narrowband messaging services as well.

MPE limits established by the RF Order, several petitioners, including AirTouch, urged the Commission to impose obligations on the owners of sites at which transmission facilities are located, rather than on individual licensees as set forth in new rule section 1.1307(b)(3), noting that at locations with multiple licensees and transmitters compliance by an individual licensee may be virtually impossible.[7/] There was no opposition to these requests.[8/]

5. AirTouch continues to believe that the site owner[9/] has a critical role in achieving the results intended by the Commission RF radiation evaluation proceeding. The Commission has authority under its general powers enumerated in Section 303 of the Communications Act of 1934, as amended (the "Act"), as well as specific authority under Section 503(b)(5) of the Act to impose

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7/ See Petition for Reconsideration of AirTouch, at 4-6; Ameritech Mobile Telecommunications, Inc., at 12; BellSouth Corporation, at 3. Paging Network, Inc. made a similar proposal in its Comments on the Notice of Proposed Rulemaking in this proceeding. See RF Order at para. 101. However, the Commission did not address this proposal.

8/ At least one commenter has expressed support for imposing monitoring and compliance obligations on site owners. See Comments of Arch, at 6.

9/ The "site owner" may not be the same entity as the "property owner". AirTouch considers the "site owner" to be the party in control of the site (i.e., the rooftop or monopole or other mounting plane).

forfeitures on non-licensees. In any event, many Commission licensees also own transmission sites and lease space to other licensees, and the Commission clearly has authority to compel compliance from such entities.

6. AirTouch and others have noted the burdensome and possibly insurmountable obstacles to compliance by individual licensees at multiple-transmitter sites.[10/] These obstacles will undermine the purpose of this proceeding, which is to identify and protect against the possibly harmful effects of RF radiation. To avoid this result, the Commission should adopt rules specifying that the site owner is responsible for collecting from each site licensee the information necessary to make exposure calculations and measurements and for supplying that information to other site licensees and applicants at their request, for ensuring that others are entitled to rely on the data, and to ensure, where measures must be taken to control exposure, that such measures are taken.

7. If the Commission declines to mandate compliance with the RF exposure guidelines by site owners, the Commission nonetheless should at a minimum acknowledge that in multiple-transmitter environments compliance with

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10/ See, e.g., Petitions for Reconsideration of AirTouch, at 4-5; Ameritech, at 12; and BellSouth, at 3-4.

the RF radiation requirements can be achieved only if a licensee has access to all of the information necessary to calculate exposure levels, and if the owner of the site on which the transmission facilities are located cooperates in limiting exposure (if necessary), particularly in "general population/uncontrolled" areas.

IV. Substantial Clarification or Modification of Section 1.1307(b)(3) Is Needed

8. Virtually all of the petitioners and commenters have urged the Commission to clarify or modify newly adopted rule section 1.1307(b)(3), which states:

> In general, when the guidelines specified in § 1.1310 are exceeded in an accessible area due to the emissions from multiple fixed transmitters, actions necessary to bring the area into compliance with the guidelines are the shared responsibility of all licensees whose transmitters produce field strengths or power density levels at the area in question in excess of 1% of the exposure limits applicable to their particular transmitter.

9. If the Commission does not reinstate the categorical exclusion for certain CMRS transmitters operating at less than 3500 watts, AirTouch agrees that Section 1.1307(b) must be substantially modified and/or clarified, either in OET Bulletin No. 65 (the "Bulletin") or in a further Order in this proceeding, before licensees at multiple-transmitter sites can certify compliance with the

RF exposure guidelines.[11/] The following sections set forth AirTouch's interpretation of certain key terms in the new rules and the Bulletin which AirTouch and others have indicated should be modified or clarified.

A. "Shared Responsibility"

10. Section 1.1307(b) states that actions necessary to bring a multiple-transmitter area into compliance with the guidelines are the "shared responsibility" of all licensees whose transmitters contribute to excess exposure limits. The Bulletin states that the required sharing is to be accomplished on a "proportionate basis".[12/] Clarification is required as to how the sharing of the costs of compliance will be accomplished.

11. Section 1.1307(b) is most applicable to complex sites where different types of transmitters (paging, cellular, PCS, ESMR, and others) may be present. For complex sites having multiple transmitters where individual measurement and allocation of responsibility for compliance

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11/ The Commission has asked for public comment on a draft of the Bulletin by October 18, 1996. AirTouch asks the Commission to incorporate those comments into its consideration of the petitions of the RF Order, since numerous issues are common to both the reconsideration proceeding and the Bulletin. AirTouch also asks that this Reply be treated as comments on the draft Bulletin.

12/ Bulletin, p. 24.

is virtually impossible, the expense of compliance should be shared equally: that is, the total expense required divided by the number of transmitters.

12. Where a transmitter of one type ("Transmitter A") has a power density limit different from a neighboring transmitter of the same type at the same site ("Transmitter B"), the licensee of Transmitter A would be responsible for compliance where the MPE from that transmitter contributed to MPE that is greater than 101% of the standard for that transmitter type. Where two licensees are colocated and in compliance with the guidelines, and another licensee colocates and causes emissions to exceed exposure limits, then the party responsible for creating the out-of-compliance condition should be responsible for "making the site whole" by performing any necessary measures. Existing carriers who are in compliance should not be asked to assume an avoidable expense caused by additional transmitters.

B. Existing Sites and Facilities

13. Several entities have requested clarification of the status of existing sites and facilities for compliance purposes.[13/] The Commission should clarify that existing, previously authorized sites and/or facilities may

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13/ See Petitions for Reconsideration of Ameritech at 2-3; AT&T at 6-7; BellSouth at 4; PCIA at 16; US West at 5.

continue operating under the rules in effect when service was authorized, but that a grandfathered licensee will be subject to compliance with the new rules if it makes any modification that causes a change in emissions (except routine maintenance such as replacement of facilities with ones of identical power and emission characteristics), and upon filing an application for renewal of license. This clarification benefits both licensees and the Commission without compromising the goal of protecting the public from possible harmful RF emissions. Thousands of existing facilities have operated for many years with no adverse effects or public concerns. Continuing operation under the current compliance regime would maintain existing emissions.

C. Definition of "Site"

14. The term "site" should be defined as a location that houses the antenna(s) of all licensees on the same altitudinal plane and that is under the control of a single site owner. The site may be a monopole (with attached antennas), including the equipment shelter and leased land adjacent to the monopole. A rooftop with antennas and support structures would also be a "site", regardless of the type or technology of the antennas.

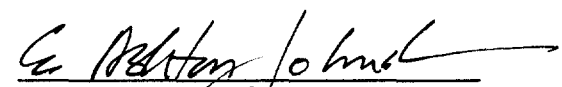
D. Definition of "Facility"

15. The term "facility" should be defined as a licensee's unique assembly of antennas, transmitters, support structures, screens, wiring, etc. A licensee should be deemed to have total control and responsibility over content, construction, and management of the "facility".

WHEREFORE, the foregoing premises duly considered, AirTouch respectfully requests that the Commission clarify and modify its rules adopted in this proceeding consistent with the foregoing and with AirTouch's Petition for Reconsideration.

Respectfully submitted,

AIRTOUCH COMMUNICATIONS, INC.

By: 

Carl W. Northrop
E. Ashton Johnston
Paul, Hastings, Janofsky & Walker
1299 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2400
(202) 508-9500

Kathleen Q. Abernathy
Mark A. Stachiw
AirTouch Communications, Inc.
1818 N Street, N.W.
8th Floor
Washington, D.C. 20036
(214) 860-3200

October 18, 1996

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CERTIFICATE OF SERVICE

I, Nadine Smith-Garrett, a secretary at the law firm of Paul, Hastings, Janofsky & Walker LLP, hereby certify that I have on this 18th day of October, 1996, caused a true and correct copy of the foregoing "Reply" of AirTouch Communications, Inc. to be sent by first-class United States mail, postage prepaid or by messenger (*), to the following:

Reed Hundt, Chairman*
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554
Stop Code 0101

Commissioner James H. Quello*
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554
Stop Code 0106

Commissioner Susan Ness*
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554
Stop Code 0104

Commissioner Rachelle Chong*
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554
Stop Code 0105

Michelle Farquar, Chief*
Wireless Telecommunications Bureau
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

ITS*
2100 M Street, N.W.
Room 140
Washington, D.C. 20554

Robert Cleveland*
Office of Engineering and Technology
Federal Communications Commission
2000 M Street, N.W., Room 266
Washington, D.C. 20554

David Wye*
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Kenneth D. Patrich
Wilkinson, Barker, Knauer
& Quinn
1735 New York Avenue, N.W.
Washington, D.C. 20006
Counsel for:
Arch Communications
Group, Inc.

Dennis L. Myers
Ameritech Mobile
Communications, Inc.
2000 West Ameritech Center Dr.
Location 3H78
Hoffman Estates, IL 60195-5000

Cathleen A. Massey
Candy Castle
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, N.W.
Suite 400
Washington, DC 20036

John A. Prendergast
Blooston, Mordkofsky, Jackson
& Dickens
2120 L Street, N.W., Suite 300
Washington, D.C. 20037
Counsel for: Ameritech Mobile
Communications, Inc.

Howard Symons
Sara F. Seidman
Gina M. Spade
Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
Counsel for:
AT&T Wireless Services, Inc.

Wendy C. Chow
Michael F. Altschul
Randall S. Coleman
Cellular Telecommunciations
Industry Association
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036

Henry L. Baumann
Barry D. Umansky
National Association of
Broadcasters
1771 N Street, N.W.
Washington, D.C. 20036

W. Kenneth Ferree
Goldberg, Godles, Wiener & Wright
1229 Nineteenth Street, N.W.
Washington, D.C. 20036
Counsel for: RAM Mobile Data USA

Arthur Firstenberg
Cellular Phone Taskforce
Post Office Box 100404
Vanderveer Station
Brooklyn, NY 11210

Mark J. Golden
Personal Communications
Industry Assoc.
500 Montgomery Street, Suite 7000
Alexandria, VA 22314-1561

William B. Barfield
Jim O. Llewellyn
BellSouth Corporation
1155 Peachtree Street, N.E.
Atlanta, GA 30309-3610

R. Michael Senkowski
Eric W. DeSilva
Wiley, Rein & Fielding
1776 K Stret, N.W.
Washington, DC 20006
Counsel for: Personal
Communications Industry Assoc.

David G. Frolio
David G. Richards
1133 21st Street, N.W.
Suite 900
Washington, DC 20036
Counsel for: BellSouth Corp.

Judith St. Ledger-Roty
Reed Smith Shaw & McClay
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005-3317
Counsel for: Paging Network, Inc.

Kathryn Marie Krause
U S West, Inc.
1020 19th Street, N.W.
Suite 700
Washington, DC 20036

Alan R. Shark
American Mobile
Telecommunications Assoc., Inc.
1150 18th Street, N.W., Suite 250
Washington, DC 20036

Elizabeth R. Sachs, Esq.
Lukas, McGowan, Nace
& Gutierrez
1111 19th Street, NW, 12th Fl.
Washington, D.C. 20036
Counsel for: American Mobile
Telecommunciations Assoc., Inc.

Christopher D. Imlay
Booth, Freret & Imlay
1233 20th Street, N.W., Suite 204
Washington, D.C. 20036
Counsel for: The American Radio
Relay League, Inc.

John I. Steward, Jr.
William D. Wallace
Crowell & Moring LLP
1001 Pensylvania Ave., N.W.
Washington, D.C. 20004-2595
Counsel for:
Electronic Energy Association

Jonathan L. Weil
Hewlett Packard Company
3000 Minuteman Road
Andover, MA 01810

George W. Siebert, CIH
Department of Defense
3400 Defense Pentagon
Washington, DC 20301-3400

Bert Dumpe
Ergotec Association, Inc.
P. O. Box 9571
Arlington, VA 22219

Marjorie Lundquist, Ph.D., CIH
Bioelectromagnetic Hygienist
P. O. Box 11831
Milwaukee, WI 53211-0831

Nadine Smith-Garrett